

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. CV 13-4302 SI

FREIDA LEE, on behalf of herself and others  
similarly situated,

Plaintiff,

v.

EQUIFAX INFORMATION SERVICES, LLC;  
and DOES 1-50, inclusive,

Defendants.

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND, DENYING  
REQUEST FOR ATTORNEYS' FEES,  
AND REMANDING ACTION TO  
ALAMEDA COUNTY SUPERIOR  
COURT**

Plaintiffs have filed a motion to remand this action to state court. The motion is scheduled for a hearing on December 17, 2013. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing. Having considered the arguments of the parties and the papers submitted, and for good cause shown, the Court hereby GRANTS plaintiff's motion to remand.

**BACKGROUND**

On December 18, 2012, plaintiff Frieda Lee filed a class action lawsuit in Alameda County Superior Court.<sup>1</sup> Docket No. 1, Ex. A-1. The original complaint alleged five causes of action, including three causes of action for violation of various sections of the California Consumer Credit Reporting Act ("CCRAA") by allowing duplicate account reporting on customer credit reports in violation of California Civil Code § 1785.14(b), failing to note consumer disputes on customer credit reports in

<sup>1</sup> Superior Court of California, Alameda County, Civil Action File No. RG12660482.

1 violation of §§ 1785.16(g) and 1785.14(b), and failing to provide a timely substantive description to  
 2 customer requests for a description of the reinvestigation in violation of § 1785.16(d)(4). *Id.* The  
 3 complaint also alleged unfair business practices and sought declaratory and injunctive relief. *Id.*

4 In the original complaint, plaintiff defined the class as "California consumers who were subject  
 5 of the acts described in 3, 4, and/or 5 above." *Id.* p. 3. Plaintiff further alleged that "class membership  
 6 in each class is in excess of 500." *Id.* p. 4. The complaint did not identify a specific amount in  
 7 controversy but did allege that "[p]laintiff and the class have suffered statutory damages . . . per CCRAA  
 8 sections 1785.31(a)(2) and 1785.31(c)," based on defendants' alleged violations of the CCRAA  
 9 described the first three causes of action. *Id.* ¶. 5-7.

10 On April 17, 2013, plaintiff filed a second action, separate and independent from the December  
 11 2012 action.<sup>2</sup> Docket No. 1., Ex. A-49. This second action was based on the assertion in Equifax's  
 12 Answer to the original complaint, that what Equifax had provided plaintiff was not a consumer or credit  
 13 report, but a consumer credit file. *Id.* The new complaint stated two causes of action and alleged a class  
 14 action only if necessary for declaratory relief. *Id.*

15 On July 1, 2013, Equifax filed demurrers for uncertainty as to each of the complaints, arguing  
 16 that neither complaint adequately alleged an ascertainable class of plaintiffs. Docket No. 1, Ex. A-36.  
 17 On August 8, 2013 the two cases were consolidated for all purposes under Civil Action File No.  
 18 RG12660482, *id.*, Ex. A-40, and on August 9, 2013, the demurrers were sustained with leave to amend.  
 19 Docket No. 1, Ex. A-42. The order instructed plaintiff to file a single amended complaint clearly  
 20 indicating which causes of action were asserted both individually and on behalf of a putative class.

21 On August 26, 2013, plaintiff filed an amended consolidated class action complaint. *Id.*., Ex.  
 22 A-45. The amended complaint asserts the same five causes of action as did the original complaint,  
 23 including the three alleging CCRAA violations.<sup>3</sup> The amended complaint adds allegations to the  
 24 second and third causes of action that defendants also violated § 1785.15(f). *Id.*

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26 <sup>2</sup> Superior Court of California, Alameda County, Civil Action File No. RG13675935.

27 <sup>3</sup> The amended complaint is mis-numbered, skipping from third cause of action to fifth cause of  
 28 action without listing a fourth cause of action.

1 In the amended complaint, the class definition was stated as follows:

2 [A] class of California consumers to whom Equifax provided credit reports containing  
3 two or more entries in the negative (here denominated “Collections”) sections of such  
4 reports or files with substantially duplicative datafields; and/or California consumers to  
5 whom Equifax provided credit reports or files containing entries which the consumers  
6 disputed, but which Equifax did not note as disputed in subsequent credit reports or files;  
7 California consumers who obtained a reinvestigation from Equifax and requested a  
8 description of the reinvestigation process, but none was timely provided; California  
9 consumers who received a description of the reinvestigation process lacking the name,  
10 business address and phone of the furnisher contacted or otherwise was substantially the  
11 same description as plaintiff received; and/or declaratory and injunctive relief regarding  
12 whether California consumers who receive what Equifax calls a credit file are subject  
13 to laws regulating credit reports; and/or declaratory and injunctive relief as to whether  
14 California consumers who receive what Equifax calls a credit file comply with what the  
15 law required for credit files, within the period from four years before the complaint was  
16 filed in the case to the present.

17 *Id.*, p. 7. The amended complaint alleges “class membership in each class exceeds 500 people.” *Id.* p.  
18 5. The amended complaint does not identify a specific amount in controversy but does allege “[p]laintiff  
19 has suffered actual and plaintiff and the class have suffered statutory damages . . . per CCRAA sections  
20 1785.31(a)(2) and 1785.31(c),” based on defendants’ alleged violations of the CCRAA described the  
21 first three causes of action. *Id.* ¶. 8-9.

22 On September 17, 2013, defendant removed the action to this Court pursuant to 28 U.S.C.  
23 § 1441, asserting jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d). Docket No.  
24 1, Notice of Removal. On October 3, 2013, plaintiff filed a motion to remand (“Pl.’s Mot.”). Docket  
25 No. 6. Defendants have opposed the motion.

## 26 LEGAL STANDARD

27 Generally, a state court action is only removable to federal court if it might have been brought  
28 there originally. 28 U.S.C. § 1441(a). Under the Class Action Fairness Act (“CAFA”), “district courts  
shall have original jurisdiction in any civil action in which the matter in controversy exceeds the sum  
or value of \$5,000,000, exclusive of interest and costs, and is a class in which . . . any member of a class  
of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2). CAFA also  
provides that “the claims of the individual class members shall be aggregated to determine whether the  
matter in controversy exceeds the sum or value of \$5,000,000.” *Id.* § 1332(d)(6). CAFA permits federal

1 court jurisdiction where only minimal, rather than complete, diversity exists; “[s]ection 1332(d) thus  
 2 abandons the complete diversity rule for covered class actions.” *Abrego Abrego*, 443 F.3d at 680. The  
 3 Ninth Circuit has explained that CAFA did not disturb the traditional allocation of the burden of  
 4 establishing removal jurisdiction, holding “that under CAFA the burden of establishing removal  
 5 jurisdiction remains, as before, on the proponent of federal jurisdiction.” *Id.* at 685; *see also Brill v.*  
 6 *Countrywide Home Loans, Inc.*, 427 F.3d 446, 448 (7th Cir. 2005). Where, as here, the complaint does  
 7 not plead a specific amount of damages, “the removing defendant must prove by a preponderance of the  
 8 evidence that the amount in controversy requirement has been met.” *Abrego Abrego v. The Dow Chem.*  
 9 *Co.*, 443 F.3d 676, 683 (9th Cir. 2006). The federal removal statute is strictly construed, and federal  
 10 courts reject jurisdiction if there is any doubt as to whether removal was proper. *Duncan v. Stuetzle*,  
 11 76 F.3d 1480, 1485 (9th Cir. 1996).

12 The mechanics and requirements for removal are governed by 28 U.S.C. § 1446. *Kuxhausen v.*  
 13 *BMW Fin. Servs. NA LLC*, 707 F.3d 1136, 1139 (9th Cir. 2013). Section 1446(b) identifies two thirty-  
 14 day periods for removing a case. *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876, 885 (9th Cir.  
 15 2010). The first thirty-day removal period is triggered if the case stated by the initial pleading is  
 16 removable on its face. *Id.* The second thirty-day removal period is triggered if the initial pleading does  
 17 not indicate that the case is removable, and the defendant receives a copy of an amended pleading,  
 18 motion, order or other paper from which removability may first be ascertained. *Id.*

## 21 DISCUSSION

### 22 I. Plaintiff’s Motion to Remand

23 Plaintiff moves to remand this action to state court because defendant’s removal was untimely.  
 24 Pl.’s Mot. p. 4. Plaintiff argues the initial complaint, filed December 18, 2012, triggered the first thirty-  
 25 day period, and that defendant’s removal, filed some nine months later on September 17, 2013, was well  
 26 beyond the thirty days allotted under § 1446(b). *Id.* Plaintiff argues that the initial complaint makes  
 27 largely the same allegation of class size and remedies sought as does the amended complaint, and the  
 28 contents of the initial complaint fully alerted the defendant to removability. *Id.*

1 In response, defendant argues that the initial complaint was indeterminate as to removability  
2 because it did not contain a class definition. Def's. Opp'n p. 8. The amended complaint, filed August  
3 26, 2013, does contain an explicit class definition, *id.* p. 8-9, so removability could be ascertained  
4 because the class definition allowed it "to determine the critical CAFA removal requirements of minimal  
5 diversity, numerosity, and amount in controversy." *Id.*

6 "The first thirty-day removal period [under § 1446(b)] is triggered 'if the case stated by the  
7 initial pleading is removable on its face.'" *Carvalho*, 629 F.3d at 885. Therefore, the complaint must  
8 reveal grounds for removal "affirmatively in the initial pleading in order for the first thirty day clock  
9 under § 1446(b) to begin." *Kuxhausen*, 707 F.3d at 1141. The Ninth Circuit has explained that  
10 "removability under section 1446(b) is determined through examination of the four corners of the  
11 applicable pleadings, not through subjective knowledge or a duty to make a further inquiry." *Harris*  
12 *v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005). The Ninth Circuit has specifically held  
13 that "a defendant does not have a duty of inquiry if the initial pleading or other document is  
14 'indeterminate' with respect to removability," *Roth v. CHA Hollywood Medical Center, L.P.*, 720 F.3d  
15 1121, 1125 (9th Cir. 2013) (citing *Harris*, 425 F.3d at 693-94), and is not required to "supply  
16 information which [plaintiff] has omitted." *Kuxhausen*, 707 F.3d at 1141. However, a defendant must  
17 apply a reasonable amount of intelligence in ascertaining removability. *Id.* at 1140. "Multiplying figures  
18 clearly stated in a complaint is an aspect of that duty." *Id.*

19 The Court finds that, under CAFA, plaintiff's original complaint was removable on its face. The  
20 original complaint alleged that plaintiff is a California citizen and defendant is a Georgia corporation,  
21 satisfying CAFA's diversity requirement. Not. of Removal, Ex. A-1, p. 1. The original complaint  
22 alleged that the minimum class membership in each of the three classes was in excess of 500 people.  
23 *Id.*, p. 4. These allegations were sufficient to satisfy CAFA's numerosity requirement. *See Kuxhausen*,  
24 707 F.3d at 1140.

25 In addition, plaintiff's allegations in the original complaint about the size of each class together  
26 with the claims for statutory damages were sufficient to satisfy CAFA's amount in controversy  
27 requirement. The Ninth Circuit has explained that the CAFA amount in controversy "is simply an  
28 estimate of the total amount in dispute, not a prospective assessment of defendant's liability." *Lewis v.*

1 *Verizon Commc'ns, Inc.*, 627 F.3d 395, 397 (9th Cir. 2010); *see also McPhail v. Deere & Co.*, 529 F.3d  
2 947, 956 (10th Cir. 2008) ("The amount in controversy is not proof of the amount the plaintiff will  
3 recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation.").  
4 To establish the jurisdictional amount, defendant need not concede liability for the entire amount.  
5 *Lewis*, 627 F.3d at 400. In addition, "[t]he amount in controversy for diversity jurisdiction may include  
6 punitive damages if recoverable under state law." *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d  
7 1004, 1009 (N.D. Cal. 2002). "Where a statutory maximum is specified, courts may consider the  
8 maximum statutory penalty available in determining whether the jurisdictional amount in controversy  
9 requirement is met." *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008);  
10 *see, e.g., Morey v. Louis Vuitton N. Am., Inc.*, 461 Fed. Appx. 642, 643 (9th Cir. 2011) ("Because the  
11 amount in controversy could be as much as \$1,000 for each subsequent violation, and it is undisputed  
12 that there were 'substantially in excess' of 5,000 credit card transactions, the preponderance of the  
13 evidence shows that the amount in controversy exceeds \$5 million.").

14 In the original complaint, plaintiff alleged three causes of action for violation of the CCRAA.  
15 Not. of Removal, Ex. A-1, ¶. 5-7. For each of these causes of action, plaintiff sought statutory damages  
16 for himself and the class under California Civil Code § 1785.31(a)(2). *Id.* In the case of a willful  
17 violation, Section 1785.31(a)(2) provides for punitive statutory damages "of not less than one hundred  
18 dollars (\$100) nor more than five thousand dollars (\$5,000) for each violation as the court deems  
19 proper." In this case, simple multiplication of \$5,000, the maximum statutory penalty under section  
20 1785.31(a)(2), by 1,500, the total minimum number of class members alleged in the original complaint  
21 for the three classes, yields \$7,500,000. *See Kuxhausen*, 707 F.3d at 885 (stating that a defendant must  
22 multiply figures clearly stated in a complaint). Therefore, the face of the original complaint satisfied  
23 CAFA's amount in controversy requirement.

24 Defendant argues that the initial complaint was indeterminate because it failed to contain a  
25 proper class definition. Def.'s Opp'n at 8-9. However, defendant fails to explain why a proper class  
26 definition was needed to determine removability. Indeed, in asserting that the amended complaint was  
27 removable under CAFA, defendant does not rely on the class definition provided in the amended  
28 pleading to calculate the amount in controversy. Defendant simply took the minimum number of class

1 members alleged in the amended complaint and multiplied that number by the maximum statutory  
2 damages sought in the amended complaint. Not. of Removal at 5; Def.'s Opp'n at 13. This same  
3 information was contained in the original complaint. *See* Not. of Removal, Ex. A-1. Because defendant  
4 could have determined removability based on the initial complaint and did not file for removal within  
5 30 days after service of the initial complaint, the defendant's motion to remove was untimely.  
6 Accordingly, the Court GRANTS plaintiff's motion to remand.

7  
8 **II. Plaintiff's Motion for Attorney's Fees**

9 Plaintiff seeks an award of attorneys fees and costs incurred in moving for remand. "An order  
10 remanding the case may require payment of just costs and any actual expenses, including attorney fees,  
11 incurred as a result of the removal." 28 U.S.C. § 1447(c). "Absent unusual circumstances, courts may  
12 award attorney's fees under § 1447(c) where the removing party lacked an objectively reasonable basis  
13 for seeking removal. Conversely, when an objectively reasonable basis exists, fees should be denied."  
14 *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 141 (2005). The Court finds that attorney's fees are  
15 inappropriate in this case, and therefore, plaintiff's motion for fees is DENIED.

16  
17 **CONCLUSION**

18 For all the foregoing reasons, plaintiff's motion to remand this case to state court is GRANTED  
19 and plaintiff's motion for fees is DENIED.

20  
21 **IT IS SO ORDERED.**

22  
23 Dated: December 16, 2013

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26 SUSAN ILLSTON  
27 United States District Judge  
28